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Supreme Court Docket Number .....

IN THE SUPREME COURT OF THE UNITED STATES

LAWRENCE HARRY REDLER,
Petitioner
v.
JACKSON COUNTY, OREGON
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OREGON

State Trial Court No. 97-2216-V
Appellate Cause No. CA A100803
Oregon Supreme Court No. SC S46422

Lawrence Harry Redler
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46 pp

QUESTIONS PRESENTED FOR REVIEW

Did the conduct of the trial violate constitutionally-guaranteed due process by changing the procedural rules from criminal to civil, then convicting and sentencing me as a criminal?

Did the trial court violate constitutionally-guaranteed due process by refusing to join the actual violators to the case as defendants?

PARTIES TO THE PROCEEDING

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TABLE OF CONTENTS

Citations of the unofficial reports of the opinions and orders entered in this case by oregon courts . . . . . -5-

BASIS FOR JURISDICTION IN THIS COURT . . . . . -5-

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE . . . . . -6-

STATEMENT OF THE CASE . . . . . -14-
When and Where the Federal Questions Were Raised . . . . -16-

ARGUMENT . . . . . -16-
What Process is Due: The Mathews Formula Applied . . . -17-
Is It Civil or Criminal? . . . . . -19-
About Adequate Notice . . . . . -20-
Mitigating Factors . . . . . -22-

Harmless Error or Structural Error? . . . . . -23-

CONCLUSION . . . . . -26-

APPENDIX . . . . . -28-

Order Denying Review (state supreme court) A-1

Order Denying Reconsideration (court of appeals) A-2

Affirmed Without Opinion (court of appeals) A-3, 4

Judgment of Conviction and Sentencing (District Court for Jackson County) A-5

Findings of Fact and Conclusions of Law (District Court for Jackson County) A-6

Order (District Court for Jackson County, denying motion for joinder) A-7

Defendant's Motion for Joinder . . . . . A-8 - 13

Defendant's Demurrer . . . . . A-14 - 17

TABLE OF CITED AUTHORITIES

Constitutional and Federal Authorities

Arizona v. Fulminante, 499 U.S. 279 (1991) . . . . . -24-, -25-

Chapman v. California, 386 U.S. 18 (1967) . . . . . -24-

Fourteenth Amendment to the U.S. Constitution, §1 . . . . -6-, -17-, -20-, -21-

Goldberg v. Kelly, 397 U.S. 255 (1970) . . . . . -17-

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) . . . . . -17-

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) . . . . . -17-, -21-

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) . . . . . -17-, -20-, -21-

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) . . . . . -25-

U.S. Supreme Court Rules

Rule 10(c) . . . . . -16-

Rule 29.2 . . . . . -6-

Supreme Court Rule 10(c) . . . . . -16-

Oregon Authorities

Hooyman and Hooyman, 113 Or App 548, 551, 833 P2d 328 (1992) . . . . . -19-

Oregon Constitution, Article I, §11 . . . . . -7-, -15-

Oregon Rules of Civil Procedure, Rule 29 . . . . . -12-, -20-

Oregon v. Kitzman, 323 Or 589, 611, 920 P2d 134 (1996) . . . -24-

ORS 135.250 . . . . . -7-, -19-

ORS 135.610-.700 . . . . . -9-, -19-

ORS 459.247 . . . . . -11-, -23-

State v. Jones, 76 Or App 157, 164, 708 P2d 1168 (1985) . . . -17-

State v. Moen, 309 Or 45, 98, 786 P2d 111 (1990) . . . . . -17-

State v. Williams, 313 Or 19, 828 P2d 1006, *cert den* ___ US ___, 113 S.Ct 171 (1992) . . . . . -24-

Jackson County Codified Ordinances (JCC)

Jackson County Codified Ordinances (JCC) 1864.06 . . -13-, -15-, -22-

JCC 202.99(b) . . . . . -14-, -18-, -19-, -23-

JCC 203.01(b) . . . . . -14-

CITATIONS OF THE UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THIS CASE BY OREGON COURTS

Oregon Supreme Court: Order Denying Review

Oregon Court of Appeals: Order Denying Reconsideration
Affirmed Without Opinion

District Court for Jackson County, Oregon:

Judgment of Conviction and Sentencing

Findings of Fact and Conclusions of Law

Order (denying motion for joinder)

BASIS FOR JURISDICTION IN THIS COURT

The Supreme Court of the State of Oregon denied review of the Court of Appeals' decision on July 6, 1999. No reconsideration of their decision was applied for.

The state courts therefore foreclosed their decision on important federal questions presented in this Petition in a way that conflicts with the relevant decisions of this Court cited in this Petition.

I am not aware of any statutory provisions conferring on this Court jurisdiction to review the orders and judgments in question.

This Petition is timely before this Court. The decision by the state court of last resort, the Oregon Supreme Court, is dated July 6, 1999. The ninetieth day from July 6, 1999, is Monday, October 4, 1999. Pursuant to Supreme Court Rule 29.2, so long as this Petition is addressed to this Court and bears a first class mail postmark no later than October 4, 1999, it is timely filed.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

Fourteenth Amendment to the U.S. Constitution, §1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Oregon Constitution, Article I, §11:

> In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment.

ORS 135.250:[1]

> **General conditions of release agreement.** (1) If a defendant is released before judgment, the conditions of the release agreement shall be that the defendant will:
>
> (a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until the defendant is discharged or the judgment is entered;

---

[1] The Oregon legislature meets only in odd-numbered years. The 1995 legislature passed new law, which is then codified as the 1995 Oregon Revised Statutes (ORS). Although the trial in this case occurred in December 1997, the 1995 ORS were the laws in effect at that time.

(b) Submit to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2)(a) In addition to the conditions listed in subsection (1) of this section, if the defendant is charged with an offense that also constitutes domestic violence, the court shall include as a condition of the release agreement that the defendant not contact the victim of the violence.

(b) Notwithstanding paragraph (a) of this subsection, the court may enter an order waiving the condition that the defendant have no contact with the victim if:

(A) The victim petitions the court for a waiver; and

(B) The court finds, after a hearing on the petition, that waiving the condition is in the best interests of the parties and the community.

(3) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that the defendant will:

(a) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Comply with such other conditions as the court may impose; and

(e) If the judgment is affirmed or the judgment is reversed

and the cause remanded for a new trial, immediately appear as required by the trial court. [1973 c.836 § 150; 1991 c.111 § 10; 1993 c.731 § 6]

ORS 135.610-.700:

DEMURRERS

135.610 Demurrer; generally. (1) The demurrer shall be entered either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

(2) The demurrer shall be in writing, signed by the defendant or the attorney of the defendant and filed. It shall distinctly specify the ground of objection to the accusatory instrument. [Amended by 1973 c.836 § 183]

135.630 Grounds of demurrer. The defendant may demur to the accusatory instrument when it appears upon the face thereof:

(1) If the accusatory instrument is an indictment, that the grand jury by which it was found had no legal authority to inquire into the crime charged because the same is not triable within the county;

(2) If the accusatory instrument is an indictment, that it does not substantially conform to the requirements of ORS 132.510 to 132.560, 135.713, 135.715, 135.717 to 135.737, 135.740 and 135.743;

(3) That the accusatory instrument charges more than one offense not separately stated;

(4) That the facts stated do not constitute an offense;

(5) That the accusatory instrument contains matter which, if true, would constitute a legal justification or excuse of the

offense charged or other legal bar to the action; or

(6) That the accusatory instrument is not definite and certain. [Amended by 1973 c.836 § 184]

135.640 When objections that are grounds for demurrer may be taken. When the objections mentioned in ORS 135.630 appear upon the face of the accusatory instrument, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the accusatory instrument, or that the facts stated do not constitute an offense, may be taken at the trial, under the plea of not guilty and in arrest of judgment. [Amended by 1973 c.836 § 185]

135.650 Hearing of objections specified by demurrer. Upon the filing of the demurrer, the objections presented thereby shall be heard either immediately or at such time as the court may direct.

135.660 Judgment on demurrer; entry in register. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an entry to that effect shall be made in the register. [Amended by 1985 c.540 § 33]

135.670 Allowance of demurrer. (1) If the demurrer is allowed, the judgment is final upon the accusatory instrument demurred to and is a bar to another action for the same crime unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new accusatory instrument, allows the case to be resubmitted or refiled.

(2) If the court allows the case to be resubmitted or refiled, it must be resubmitted or refiled by the state within 30 days from the date on which the court enters the order. If the case is not resubmitted or refiled within that time, the defendant shall be discharged from custody or the release agreement discharged or the security deposit returned as provided in ORS 135.680.

[Amended by 1973 c.836 § 186]

135.680 Failure to resubmit case after allowance of demurrer. If the court does not allow the case to be resubmitted or an amended complaint or information filed, the defendant, if in custody, shall be discharged. If the defendant has been released, the release agreement shall be discharged. If the defendant has deposited any security, the security shall be returned to the defendant as provided by law. [Amended by 1973 c.836 § 187]

135.690 Resubmission of case. If the court allows the case to be resubmitted, the same proceedings shall be had thereon as are prescribed in ORS 135.540. [Amended by 1973 c.836 § 188]

135.700 Disallowance of demurrer. If the demurrer is disallowed, the court shall permit the defendant, at the election of the defendant, to plead, which the defendant must do forthwith or at such time as the court may allow; but if the defendant does not plead, a plea of not guilty shall be entered. [Amended by 1973 c.836 § 189]

ORS 459.247:

Prohibition on disposal of certain solid waste at disposal site. (1) No person shall dispose of and no disposal site operator shall knowingly accept for disposal the following types of solid waste at a solid waste disposal site:

(a) Discarded or abandoned vehicles;

(b) Discarded large home or industrial appliances;

(c) Used oil;

(d) Tires; or

(e) Lead-acid batteries.

(2) As used in this section, "used oil" has the meaning given that term in ORS 459A.555.

(3) Nothing in this section shall prohibit a disposal site operator from accepting and storing, for purposes of recycling or recovering, any of the types of solid waste listed in subsection (1) of this section. [1991 c.385 s.39]

Oregon Rules of Civil Procedure, Rule 29:

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may (a) as a practical matter impair or impede the person's ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. If such person has not been so joined, the court shall order that such person be made a party. If a person should join as a plaintiff but refuses to do so, such person shall be made a defendant, the reason being stated in the complaint.

B Determination by court whenever joinder not feasible. If a person as described in subsections A(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the

person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

C Exception of class actions. This rule is subject to the provisions of Rule 32. [CCP 12/2/78; amended by 1979 c.284 s.20]

Jackson County Codified Ordinances (JCC) 1864.06:

"1864.06 SOLID WASTE ACCUMULATIONS PROHIBITED; DECLARATION OF NUISANCE.

"(a) Except as set forth in Section 1864.07, no person shall maintain, display or allow to exist on any property, or within a public road right of way adjacent to any property, the following:

"(1) Any accumulation, collection, storage or display of inoperable vehicles or solid waste that is offensive or hazardous to the health and safety of the public, creates offensive odors or creates a condition of unsightliness;

"(2) An abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed; or

"(3) Any abandoned or inoperable vehicle upon private or public property, unless the owner of the property is lawfully authorized to operate a business specifically for that purpose.

"(5) A violation of subsection (a) hereof constitutes a nuisance."

JCC 202.99(b):

> "Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared in these Codified Ordinances to be an offense, whether individually or in connection with another person, or as principal, agent or accessory, shall be guilty of such offense. Every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of these Codified Ordinances shall likewise be guilty of such offense."

STATEMENT OF THE CASE

This is not a complicated case. It has only two basic issues: first, is this case civil in nature or criminal? Second, why was I prosecuted and not the persons who actually violated the county code on the citation?

I own a small parcel of land in Medford, Oregon. The land is unimproved and vacant. As a result of my personal bankruptcy in 1992, that parcel was turned over to a bankruptcy trustee who had full control of the property for approximately three years. During that time a person, with the aid of another, disposed of a large quantity of junk truck tires and waste barrels on that parcel of land. The trustee then returned control of the property back to me with that mess on it.

The bankruptcy trustee was Michael Grassmueck. The actual dumping violation was by Robert Lewis with Art Turner's aid.

In the spring of 1996 I tried to get the local sheriff's department to cite the actual violators. I was told by a deputy it was a civil matter and they would do nothing. When the Jackson County code enforcement officer later cited me for having that waste on my property, I told him what the deputy had said, that this was a civil matter, and asked for his help in pursuing the culprits who did the actual dumping. Apparently it was too much trouble for him to

locate the dumpers. He returned and cited me.

I was cited for a violation of the county code, JCC 1864.06, described on his "Citation/Complaint and Summons" simply as "solid waste accumulation." I appeared at court as scheduled. The court asked me to plead guilty or not guilty. I denied guilt, which was then entered as "not guilty." A clerk then presented me with a printed release agreement by the court which, to my surprise, indicated that I had been in custody and could only be released under certain conditions. One of those conditions prohibited me from leaving the state. I called that to the clerk's attention along with informing her I am a truck driver who must leave the state according to my employer's dispatches. The clerk crossed out that prohibition so I wouldn't be out of a job.

By this time it was obvious this was a criminal case. I had plead not guilty, been in custody and released, all criminal procedures I found to be laid out in ORS 135. I used the form in that same chapter to prepare a demurrer, the vehicle for demanding the nature and cause of the charges against me, as is my right under the Oregon Constitution, Article I, §11.

I presented the demurrer to the court at the first trial date on October 14, 1997. On that trial date Judge Crain informed me she would not accept the demurrer, and explained this case was not criminal, but a civil case. Being surprised by this I asked for and was granted a continuance to prepare for a civil trial.

Before the time of the civil trial I prepared, filed and served a motion under Oregon Rule of Civil Procedure 29 for the court to join to the case the persons who actually dumped the offending material on my land. Judge Crain denied that motion. See Order, Appendix page A-7. I filed and served a formal objection and the case proceeded to trial on December 19, 1997.

At the trial I not only presented two of the actual violators as my witnesses, but presented two others who had witnessed the offenders dumping the offensive waste on my property without my

permission. The trial court judge still chose to ignore the evidence and ruled against me with her simple formula of "you own the property, you're guilty." The basic purpose of this Petition is to confirm if this judge did truly violate my constitutionally-guaranteed right to due process of law.

After the trial the court issued a "Findings of Fact and Conclusions of Law" and a "Judgment of Conviction and Sentencing." I timely appealed, the Court of Appeals affirmed without opinion on December 16, 1998, then denied my Petition for Reconsideration on February 17, 1999. My Petition for Review to the state supreme court was denied on July 6th, and here we are.

When and Where the Federal Questions Were Raised

The pertinent federal questions were raised in the court of first instance by Defendant's Demurrer (page 2, ¶¶ (8)(h), (i) and (j), page 3, ¶ 9 continued from page 2).

These questions were also raised to the Court of Appeals by my Appellant's Brief on page 10 ("Conclusion"). Additional authorities were raised to this court when I submitted the Petition for Reconsideration on page 4, ¶ 4(j) and its footnote 3, all of ¶ 5 (dealing with structural errors over pages 4-5). The Court of Appeals affirmed without opinion.

My Petition for Review to the state supreme court also addressed these questions on pages 3-5 and 8. This state court of last resort denied review of the Court of Appeals decision to affirm without opinion.

ARGUMENT

The chief reason relied on to allow the writ is found in Supreme Court Rule 10(c): a state court has decided important federal questions in a way that conflicts with relevant decisions of this Court. These important federal questions are those presented on the "Questions Presented for Review" page above.

The strongest conflicts between this case and your past decisions are found in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978), and Goldberg v. Kelly, 397 U.S. 255 (1970).

It should first be noted that Oregon's Constitution does not include a due process clause.[2] Because the Oregon Constitution has no due process clause, my claim that I am entitled to certain constitutional procedural protections arises under the Fourteenth Amendment.[3] Still, what process is due to one who is alleged to have violated a county code prior to a fine or other penalty being imposed?

What Process is Due: The Mathews Formula Applied

The question of what process is due is determined by balancing the factors set forth in Mathews v. Eldridge, 424 U.S. 319, 335 (1976): (1) the nature of the private interest affected, (2) the risk of erroneous deprivation of that interest through the procedure used together with the probable value, if any, of other safeguards; and, (3) the governmental interest involved.

Nature of Private Interest

The nature of the private interest affected is substantial. The county seeks to force me into doing more than just clean up the trash others dumped on my property. It is attempting to force me into disposing of solid waste which have been declared by the state

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[2] The Oregon Supreme Court has "repeatedly has stated that Oregon's constitution does not contain a due process clause." State v. Moen, 309 Or 45, 98, 786 P2d 111 (1990).

[3] State v. Jones, 76 Or App 157, 164, 708 P2d 1168 (1985)

to be hazardous to the environment and mandates certain methods and criteria for handling and disposal — a complicated and expensive proposition far beyond my means to accomplish.

Risk of Erroneous Deprivation

The risk of erroneous deprivation is great. Simply put, the county, with the court's blessing, has adjudged me liable for the violations of county code mainly committed by others. The erroneous deprivation lies in adjudging me liable for other persons' acts offensive to the county.

A good analogy would be one where a shop owner arrives at his place of business to find a pile of stolen merchandise dumped in the middle of his shop's main floor. Being a good citizen he notifies the police, who then arrest him for possessing stolen property. He is then prosecuted for possessing the stolen property. All through this neither the police nor the prosecutors nor the court are a bit interested that some other person actually stole the property then placed it on the shop owner's property.

This step of the formula requires the court to consider "the risk of erroneous deprivation of that interest through the procedure used together with the probable value, if any, of other safeguards." Erroneous deprivation has just been addressed. The problem here is the procedure used ignored the important safeguard built into the Jackson County Code, JCC 202.99(b), discussed later in this petition. Suffice it to say here that ordinance requires any person who "aids or abets" et cetera in committing an offense against the county "shall be guilty of such offense."

Governmental Interest

The governmental interest on one hand is substantial. A clean environment is the county, city, state and every good citizen's concern. Of concern are two actual offenses committed here, the "accumulation of solid waste" and the dumping. Kind of like there's the stash, but who did the stashing?

The governmental interest on the other hand is *de minimis*. This interest is in identifying, citing and prosecuting those who actually commit the offenses, not just the convenient landowner. The government body here as plaintiff, and the court as an assumedly impartial trier of fact, have completely ignored JCC 202.99(b), the portion of its own code requiring them to seek out and prosecute the actual violators.

Is It Civil or Criminal?

Of key importance in this case is the courtroom environment, or procedural framework of the case, created by the judge presiding there. This is a power inherent to every judge presiding over an Oregon courtroom.[4]

To this layman the nature of the proceeding was obvious — I was asked in my initial appearance to plead guilty or not, then presented with a "Recognizance/Conditional Release Agreement" by a clerk which detailed my "conditions for release from custody." These are legal conditions endorsed by ORS 135.250, a statute with the heading "General conditions of release" from a chapter entitled "Arraignment and Pretrial Provisions" and "Procedure in Criminal Matters Generally." Because it was clear to me the case was criminal in nature, I prepared a demurrer according to the statutes I read just down the page in the same chapter, ORS 135.610-.700.

Despite all of this I was informed by the trial judge the case was *civil*, not criminal. That same judge later signed the final judgment entitled "Judgment of Conviction and Sentence."

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[4] Hooyman and Hooyman, 113 Or App 548, 551, 833 P2d 328 (1992): "A trial court, in the exercise of sound discretion, has the authority reasonably to control the presentation of evidence and the examination of witnesses. OEC 611(1). The exercise of that authority is reasonable only if it is fundamentally fair and allows opportunities for a reasonably complete presentation of evidence and argument."

I do *not* understand how I could be *convicted* and *sentenced* — in a *civil* case!

About Adequate Notice

Oregon offers both rules of civil procedure (Oregon Rules of Civil Procedure) and rules of criminal procedure (Oregon Revised Statutes, Title 14, "Procedures in Criminal Matters Generally," ORS chapters 131 through 153).

I submit that failure to establish the set of procedural rules to be used in a court proceeding violates fundamental fairness as well as the adequate notice requirement of due process. To conclude otherwise endorses the way the trial court forced me to engage in a frustrating shell game. The true set of rules the court is going by is hidden under one shell, but all my attention is forced on the limited questions of whether I should be intent on bargaining with one set of rights protecting me in a criminal prosecution (such as demanding the nature and cause of the charge against me with a demurrer), or bringing a motion for joinder under the applicable rules of civil procedure, ORCP 29. By broadly defining the procedure to this legal layman simply as an "offense" or a "violation" yet refusing to allow the protective procedural safeguards offered first by criminal procedure (my demurrer) then civil (my motion for joinder), the trial court managed to turn over only the empty shells, not the one hiding the prize — constitutionally-guaranteed due process!

Some could call this court arbitrary and capricious in the way it so casually switched the nature of the proceedings. Surely this violates due process!

Adequate notice is an "elementary and fundamental requirement of due process."[5] The Due Process Clause of the Fourteenth Amendment normally requires "timely and adequate notice detailing

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[5] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)

the reasons"[6] for a proposed adverse action and "an effective opportunity to defend" against the action.[7] Such process is constitutionally required whenever the action may be "challenged * * * as resting on incorrect or misleading factual premises *or on misapplication of rules or policies to the facts of particular cases*."[8] (My italics)

Adequate notice under the Due Process Clause has two components. The notice must inform affected parties of the action about to be taken against them *as well as* the procedures available for challenging that action.[9] These requirements serve discrete purposes. Adequate notice of the action itself permits the individual to evaluate the action's accuracy or propriety, and to make an *informed* determination whether to appear or default, contest it or just give in.

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 14-5 (1978) (footnotes omitted, italics added for emphasis) offers us this best guidance on this topic, in relevant part:

> "The purpose of notice under the Due Process Clause is to apprise the affected individual of, *and permit adequate preparation for*, an impending 'hearing.' Notice in a case of this kind does not comport with constitutional requirements *when it does not advise the customer of the availability of a procedure* * * *. As no such notice was given respondents — despite 'good faith efforts' on their part — they were deprived of the notice which was their due."

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[6] Goldberg v. Kelly, 397 U.S. 255, 267 (1970)

[7] Goldberg at 268

[8] *Ibid.*

[9] Memphis Light at 13; Mullane at 314.

Mitigating Factors

According to the original "Citation/Complaint and Summons" the county alleged I did unlawfully violate JCC 1864.06 "by committing or permitting to be committed the violation of solid waste accumulations." JCC 1864.06 provides, in relevant part:

"(a) Except as set forth in Section 1864.07, no person shall maintain, display *or allow to exist* on any property, or within a public road right of way adjacent to any property, the following:

"(1) Any accumulation, collection, storage or display of * * * solid waste that is offensive or hazardous to the health and safety of the public, creates offensive odors or creates a condition of unsightliness;

"(5) A violation of subsection (a) hereof constitutes a nuisance."

Two key words in this offense are "maintain" and "allow." To "maintain * * * [an] accumulation * * * of * * * solid waste that is offensive or hazardous" and so forth means I would have to "preserve from failure or decline" or "sustain [my accumulated waste] against opposition or danger."[10]

To "allow" the accumulation means I would have had to permit the waste to dumped there, or neglected to restrain or prevent others from doing it.[11] The facts of the case as presented to the court and not controverted by the County definitely showed others put the offending waste there *without* my permission or involvement.

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[10] Merriam-Webster Collegiate Dictionary, Electronic Edition, version 1.5, tells us "maintain" is a transitive verb with its origins in the 14th century.

[11] *Ibid.*

Another mitigating factor to this ordinance is the balancing effect of JCC 202.99(b) which provides, with my italics:

> "*Every* person who commits, attempts to commit, *conspires to commit or aids or abets in the commission of any act declared in these Codified Ordinances to be an offense, whether individually or in connection with another person,* or as *principal*, agent or accessory, shall be guilty of such offense. Every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of these Codified Ordinances shall likewise be guilty of such offense."

The county code I am alleged to have violated prohibits me from maintaining, displaying or allowing to exist on my property an accumulation of solid waste. On my property there is a *big* pile of junk tires, metal barrels containing unknown liquids and other debris that other people put there. Just to lawfully dispose of the tires entails far more than loading them on a truck and taking them to the dump. ORS 459.247 prohibits disposing of used tires at a regular public disposal site. State law imposes further stringent restrictions upon their handling, including a prohibition against transporting without special permits and the requirement of a $5,000 "financial assurance" in the state's name. All this is just for disposing of the junk tires. The barrels are covered under entirely different procedures and statutes.

Lawfully disposal of the waste to comply with the court's judgment is far beyond my financial means to accomplish, especially when it was shown to the court at trial that *others* committed the actual offense against the county. My only guilt was to own the land that was their choice of dumping sites.

Harmless Error or Structural Error?

In the Respondent's brief to the Court of Appeals, Respondent claimed in no less than five places that the court's failure to accept my demurrer was harmless error. Neither the state court of appeals

or supreme court addressed any aspect of this case, including harmless error.

In general, errors of federal constitutional dimension are tested by the harmless error standard defined in Chapman v. California, 386 U.S. 18 (1967).[12] Such errors are prejudicial unless the reviewing court determines *beyond a reasonable doubt* that it had no effect on the verdict. In rare situations, however, where the error infects the "structural integrity"[13] of the trial process, reversal is required.

The courts in Oregon, as do all courts in America, have an obligation to reverse for structural errors. According to this court, not all constitutional errors require reversal. There are two tests for these kinds of errors: "trial error" and "structural error."

Arizona v. Fulminante, 499 U.S. 279 (1991), compiles cases in which this Court has applied the "harmless error" analysis to errors in the trial process. The case goes further by distinguishing errors involving structural defects against harmless trial errors. Fulminante actually provides much of the grist on case law on this subject from our own state supreme court[14] through more recent U.S. Supreme Court decisions. It should be considered to be controlling. Fulminante provides at 310 defines structural errors as a "constitutional deprivation * * * a * * * structural defect affecting

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[12] Oregon v. Kitzman, 323 Or 589, 611, 920 P2d 134 (1996): "In general, federal constitutional error is deemed harmless if the appellate court concludes beyond a reasonable doubt that the error did not contribute to the conviction. *See* Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967) (stating standard)."

[13] *See* Arizona v. Fulminante, 499 US 279, 294 (1991)

[14] *See* State v. Williams, 313 Or 19, 828 P2d 1006, *cert den* ___ US ___, 113 S.Ct 171 (1992)

the framework within which the trial proceeds, rather than simply an error in the trial process itself."

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) expands on and further explains Arizona v. Fulminante:

> "Although most constitutional errors have been held amenable to harmless error analysis, see Arizona v. Fulminante, 499 U.S. 279, 306-307 (1991) (opinion of REHNQUIST, C.J., for the Court) (collecting examples), some will always invalidate the conviction. *Id.* at 309-310 (citing, inter alia, Gideon v. Wainwright, 372 U.S. 335 (1963) (total deprivation of the right to counsel); Tumey v. Ohio, 273 U.S. 510 (1927) (trial by a biased judge); McKaskle v. Wiggins, 465 U.S. 168 (1984) (right to self-representation)). The question in the present case is to which category the present error belongs."

A structural error is one in which "[t]he deprivation of that right, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" Sullivan at 282. As Chief Justice Rehnquist explained in his concurring opinion on that same page:

> "In Arizona v. Fulminante, 499 U.S. 279 (1991), we divided the class of constitutional violations that may occur during the course of a criminal proceeding, be it at trial or sentencing, into two categories: one consisting of 'trial error[s],' which 'may . . . be quantitatively assessed in the context of other evidence presented,' *id.* at 307-308 (opinion of REHNQUIST, C.J., for the Court), and are amenable to harmless error analysis; the other consisting of 'structural defects,' which 'affec[t] the framework within which the trial proceeds,' *id.* at 310, *and require automatic reversal.*" (My emphasis)

To tie this up into a nice, neat package for you, I submit the "Conviction and Sentencing" (again, *this is civil?*) which I appealed up through the Oregon appellate process is *automatically reversible* on at least two grounds of structural error:

First, due process demands a trial be fundamentally fair. How can it be so when the court can't make up its mind whether this case is to be conducted under rules of criminal procedure or rules of civil procedure? The court claimed the case was criminal, then civil, then presented me with a judgment convicting and sentencing me, while Respondent's brief bounced back and forth on whether the violation/offense was criminal, civil or even quasi-criminal. Why is that relevant? Because what rules of procedure was I supposed to prepare for the trial? The criminal code under which I *timely* submitted a demurrer, or the Oregon Rules of Civil Procedure, under which I submitted a motion to join the true actors of the alleged violation? It is structural error simply because "the framework within which the trial proceeds" is determined by the set of laws applied to the proceedings.

Second, there is a failing of proper structure when the court shows a complete lack of interest in the persons who actually committed the offense. Not only did I bring witnesses to the court to prove who the culprits were, but two of them were actually in the courtroom under my subpoena. Under the county's own rules they should have been tried, at minimum, as co-dumpers with me.

CONCLUSION

When I address a judge as "Your Honor" I am bestowing upon that person a respect for the dignity and high moral ethics of the office. I also began this process to you with a profound belief in the expectation that fundamental fairness and substantial justice is the most important aspect of the judicial process. Instead I have been deceived by a cavalier attitude toward me as a party unrepresented by an attorney, with the main objective appearing to be to process the case in the most expeditious manner possible. I've found the experience to be surreal, with the rules of law suspended, irregularities permitted, and I have been treated as a nuisance rather than taken seriously. As a litigant, even without a lawyer, I am entitled to the same dignity as the judge, so long as my cause is just and sincere, which it is. By being yawned at from three state court benches so far, I have found I and my cause have been treated with

contempt.

It appears from media reports lately our court system has expressed frustration with its case loads. If the cases were properly conducted to begin with, this burden on the appellate system — including this, the highest court in the land — would not fall on courts at the higher levels.

What I would like this court to do:

- Declare the Judgment of Conviction and Sentencing void for violating due process;
- Remand for a new trial based on my demurrer; and
- Add the actual dumpers — Michael Grassmueck, Robert Lewis, and Art Turner — to the case as defendants.

APPENDIX

Order Denying Review (state supreme court) A-1

Order Denying Reconsideration (court of appeals) A-2

Affirmed Without Opinion (court of appeals) A-3, 4

Judgment of Conviction and Sentencing (District Court for Jackson County) A-5

Findings of Fact and Conclusions of Law (District Court for Jackson County) A-6

Order (District Court for Jackson County, denying motion for joinder) A-7

Defendant's Motion for Joinder A-8-13

Defendant's Demurrer A-14-17

A-1

Order Denying Review.tif (1704x2200x2 tiff)

IN THE SUPREME COURT OF THE STATE OF OREGON

JACKSON COUNTY Respondent/Respondent	)	
v.	)	ORDER DENYING REVIEW
	)	CA A100803 SC S46422
LAWRENCE HARRY REDLER Appellant/Petitioner	)	

The Court has considered the petition for review and orders that it be denied.

DATE: July 6, 1999.

/s/ W. MICHAEL GILLETTE
W. MICHAEL GILLETTE
PRESIDING JUSTICE

COPIES TO:

DOUGLAS MALCOLM MCGEARY — Attorney for Respondent/Respondent
LAWRENCE HARRY REDLER — Attorney for Appellant/Petitioner

his computer-generated case caption may not comply with ORAP 2.05(1) & 5.05(5

A-2

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JACKSON COUNTY,	)	Jackson County District Court No. 97-2216-V
Plaintiff-Respondent,	)	
v.	)	CA A100803
LAWRENCE HARRY REDLER,	)	
Defendant-Appellant.	)	**ORDER DENYING PETITION FOR RECONSIDERATION**

Appellant has filed a petition for reconsideration of the court's decision dated December 16, 1998, pursuant to ORAP 6.25(1)(v).

The petition is denied.

JACK L. LANDAU
Presiding Judge

FEB 17 1999
DATE

c: Lawrence H. Redler
Douglas M. McGeary

REPLIES SHOULD BE DIRECTED TO THE STATE COURT ADMINISTRATOR, RECORDS SECTION, SUPREME COURT BUILDING, 1163 STATE STREET, SALEM OR 97310

JSH

A-3

FILED: December 16, 1998

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JACKSON COUNTY,

Respondent,

v.

LAWRENCE HARRY REDLER,

Appellant.

COPY

Jackson County District Court No. 97-2216-V

CA A100803

Date argued or submitted on briefs: November 20, 1998

Before: Landau, Presiding Judge, and Deits, Chief Judge, and Wollheim, Judge

Attorney for Appellant: Lawrence H. Redler *pro se*

Attorney for Respondent: Douglas M. McGeary

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent [X] Costs allowed, payable by: Appellant

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MONEY JUDGMENT

Judgment #1

Creditor(s): Jackson County

Debtor(s): Lawrence Harry Redler

Costs: $ 184.00

TOTAL AMOUNT: $ 184.00

Interest: Simple, 9% per annum, from the date of this appellate judgment.

APPELLATE JUDGMENT

A-4

MONEY JUDGMENT

Judgment #2*

Creditor(s): Judicial Department, State of Oregon

Debtor(s): Lawrence Harry Redler

Unpaid filing fee: $ 140.00

TOTAL AMOUNT: $ 140.00

Interest: Simple, 9% per annum, from the date of this appellate judgment.

* Judgment for unpaid filing fee. ORS 21.605

Appellate Judgment
Effective Date: August 20, 1999

COURT OF APPEALS
(seal)

A-5

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

JACKSON COUNTY,

Plaintiff,

vs.

LAWRENCE HARRY REDLER,

Defendant.

Case No: 97-2216-V

JUDGMENT OF CONVICTION AND SENTENCE

Defendant is hereby convicted of CODE VIOLATION

MONEY JUDGMENT

Creditor: State of Oregon Debtor: Lawrence Harry Redler

Fine: $ 500.00 Suspended Fine $ 400.00 Provided Defendant:

remove all solid waste from the premises on or before March 29, 1998, and bring property into compliance.

Total Monies Due $ 100.00

MONIES ARE DUE IN FULL IMMEDIATELY UPON SENTENCING.

Dated: December 29, 1997

ENTERED CR 1-5-98 4:03PM

P Crew

Circuit Court Judge

RECEIVED AND FILED

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TRIAL COURT ADMINISTRATOR
DOCKETED BY

c: Jackson County Counsel
Defendant

BEST AVAILABLE COPY

4-6

IN THE DISTRICT COURT OF THE STATE OF OREGON
FOR JACKSON COUNTY

JACKSON COUNTY,

Plaintiff,

vs.

LAWRENCE HARRY REDLER,

Defendant.

Case No: 97-2216-V

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER came on for hearing before the Court on December 19, 1997. Both parties appeared, the Plaintiff through its Compliance Officer and the Defendant in person.

THE COURT makes the following Findings of Fact:

1. Defendant has been, and currently is, the owner of the real property in question.

2. There is a variety of trash, materials, and other solid waste on the real property.

3. The trash and solid waste has been on the property since some time, at least, in 1993.

4. Defendant is in control of the real property, and was in control of the real property on the date the citation was issued.

BASED UPON the above findings, the Court makes the following Conclusions of Law:

1. Defendant is the owner of the real property in question.

2. The real property has solid waste on it.

3. Defendant is liable to clean up the property.

DATED this 29 day of December 1997.

P Crain

Patricia Crain
District Court Judge Pro Tem

c: Jackson County Counsel
Defendant

A-7

IN THE DISTRICT COURT OF THE STATE OF OREGON
FOR JACKSON COUNTY

JACKSON COUNTY,

Plaintiff,

vs.

LAWRENCE HARRY REDLER,

Defendant.

Case No: 97-2216-V

ORDER

THIS MATTER came on before the Court upon the Defendant's Motion for Joinder of Parties.

THE COURT having reviewed said motion and supporting affidavit; and, being fully advised in the premises, sets forth the following:

IT IS HEREBY

ORDERED that Defendant's Motion for Joinder of Parties be, and hereby is, denied.

DATED this 6 day of November 1997.

Patricia Crain
District Court Judge Pro Tem

cc: Jackson County Counsel
Lawrence Harry Redler, Defendant

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TRIAL COURT ADMINISTRATOR
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ORDER

A-8

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TRIAL COURT ADMINISTRATOR
DOCKETED BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JACKSON

STATE OF OREGON, Plaintiff v. LAWRENCE HARRY REDLER, Defendant.	No. 972216V DEFENDANT'S MOTION FOR JOINDER OF PARTIES — ORCP 29

DEFENDANT, Lawrence Harry Redler, moves the court to join Michael Grassmueck, Robert Lewis, and Art Turner as co-defendants to this case.

This motion is based on the files and records herein, my supporting affidavit, and the following:

1.

In the hearing last week Judge Crane ruled this matter is civil in nature, not criminal. Therefore the Oregon Rules of Civil Procedure apply.

////

2.

Any further proceedings in the absence of Michael Grassmueck, Robert Lewis, and Art Turner as parties and co-defendants in this matter would be prejudicial to me.

3.

Joinder of Michael Grassmueck, Robert Lewis, and Art Turner as parties in this matter will lessen or completely avoid prejudicial effect in any protective provisions of this court's judgment or however this court may choose to ultimately shape relief in this case.

4.

Based on my affidavit and the testimony of witnesses who can be brought before the court, it is clear that Michael Grassmueck, Robert Lewis, and Art Turner are the real defendants at fault in this alleged violation of Jackson County code.

STATEMENT OF POINTS AND AUTHORITIES

ORS 9.320: "Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney * * *"

Nelson and Nelson, 117 Or App 157, 159 (1992), provides in footnote 2 that although the moving party's pleading was "in an unconventional format", it did bring the adverse party's noncompliance with a court rule to the court's attention, "and it was sufficient to preserve the issue of his noncompliance."

ORCP 12 provides that the court shall view pleadings liberally, and "with a view of substantial justice between the parties." And the court shall, at every stage of an action, disregard minor defects and errors that don't affect the substantial rights of the adverse party.

The Oregon Rules of Civil Procedure apply to every proceeding whether invoked or not. See Wilcox Property Management v. Appel, 110 Or App 90, 93 (1991).

ORCP 28A provides, in relevant part: "All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A * * * defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities."

ORCP 29A provides: "A person who is subject to service of process shall be joined as a party in the action if (1) in that person's absence complete relief cannot be accorded among those already parties * * *, or (2) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may * * * (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest."

////

WHEREFORE, Defendant prays the court shall join Michael Grassmueck, Robert Lewis, and Art Turner as defendants indispensable to the rendering of the court's final justice without prejudice to me.

DATED: Oct 31 1997.

////

Lawrence Harry Redler

Lawrence Harry Redler, Defendant pro se

P.O. Box 1252 / Medford OR 97501

Telephone: 779-5961

A-11

RECEIVED
AND
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JACKSON
97 OCT 31 PM 2:04

TRIAL COURT ADMINISTRATOR

STATE OF OREGON, Plaintiff

v.

LAWRENCE HARRY REDLER, Defendant.

DOCKETED

No. 972216V

DEFENDANT'S AFFIDAVIT IN SUPPORT OF MOTION TO JOIN PARTIES

STATE OF OREGON)
) ss.
County of Jackson)

I, Lawrence Harry Redler, Defendant in this case, do hereby depose and swear THAT:

1. I make this motion in good faith, based on the best of my knowledge and belief, and not for the purpose of delay or to inconvenience the Plaintiff.

2. I filed bankruptcy in May, 1992. Part of the bankruptcy procedure is to turn over all your property and equipment to the bankruptcy court. The bankruptcy trustee appointed in my case was Michael Grassmueck, who assumed all responsibility for the case and took control over my property.

3. While Mr. Grassmueck had control over my property, Robert Lewis, with the aid of Art Turner, dumped the waste to which the County objects on my property. There are witnesses to this.

4. I did not give permission for this dumping to occur nor did I allow it occur.

5. I do not have the means to pay for the proper loading, hauling and disposal of this waste. In fact, I complained to the Sheriff's office about it, who have done nothing about it.

6. The complaining officer, Mr. Bingham, has knowledge that Robert Lewis has previously dumped waste on other people's property without their permission.

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RECEIVED AND FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JACKSON

OCT 17 1997

TRIAL COURT ADMINISTRATOR
DOCKETED BY

STATE OF OREGON,

Plaintiff

v.

LAWRENCE HARRY REDLER,

Defendant.

No. CR 97-6019

DEFENDANT'S DEMURRER – ORS 135.630

DEFENDANT, Lawrence Harry Redler, objects to the grounds, and challenges the sufficiency, of the State's complaint against me as follows:

1. I am not an attorney. No counsel was offered to me at arraignment, which is contrary to ORS 135.040. I am therefore forced to defend myself in this case pro se. At no time have my rights under Oregon law or the Constitutions been declared or otherwise stated to me by an officer of the court or this county. Therefore, in the interests of justice, this demurrer should be allowed.

2. The accusatory instrument in this case is the complaint originally written out and filed by Mr. Bingham, who I assume to be a duly authorized code enforcement officer of some sort. This complaint scarcely alleges that I am in violation of Jackson County Code § 1864.06 for "solid waste accumulation".

3. I assume I have been charged with a crime, since there was a conditional release given to me and I have been threatened with jail.

4 An accusatory instrument is sufficient if it describes the offense in the words of the statute and contains *all* of the elements of the crime. See ORS 131.005(1)

5. Pursuant to ORS 133.015(7), this complaint must contain "A statement of the acts constituting the offense in ordinary and concise language * * * to enable a person of common understanding to know what is intended * * *."

6. Pursuant to ORS 135.630(4), the facts stated in the complaint filed against me in this case do not constitute an offense because the complaint states no facts.

7. Pursuant to ORS 135.630(6), the accusatory instrument is not definite and certain. It simply mirrors the statute without stating my specific acts which are necessary to identify what I am alleged to have done to constitute this violation. The only thing this complaint has done is tell me I am being charged with violation of what I assume to be the "solid waste accumulation" section of this county's code. By doing so this complaint is in violation of our state's Constitution, Article I, section 11, which provides that an accused person has the right to

15

"demand the nature and cause of the accusation against him."

8. The allegations in the complaint are not particular enough to enable me, as the Defendant in this case, to make my defense. This complaint does not tell me:

(a) What kind of solid waste is in violation of county code? Am I in violation for leaving a couple bags of garbage on my back porch?

(b) How much of what kind of "solid waste" must be on my property to constitute a violation worth charging me with this crime?

(c) What knowledge does the complainant have that I actually violated county code?

(d) What knowledge does the complainant have that I may have allowed another to perhaps violate county code?

(e) Must I voluntarily or involuntarily allow "solid waste" to "accumulate" on my property to be in violation of this code?

(f) If another person actually violated the county code, and I did not consent to this violation, am I the one to be held liable or is the county interested in the actual violator?

(g) Was the complainant invited on my private property? If so, by who? Was I present? If not, what authorized him to set foot onto my property without my invitation or presence?

(h) What did the complainant do, as an official representative of this county, to ensure he did not violate my rights secured by the Fourth Amendment of the U.S. Constitution?

(i) If uninvited, what limitation does the Fourth Amendment of the U.S Constitution place on the county, its codes and representative complainant to set foot upon my property?

(j) What kind of policies does this county have to ensure its citizens' Fourth Amendment rights are not violated by its representatives?

9. Since I am pro se, and the county undoubtedly will be represented in court by a presumably seasoned attorney, I must carefully prepare for the next scheduled court appearance on October 14th. The complaint does not describe my alleged offense in enough detail, or provide sufficient particulars, to allow me to adequately prepare for a trial. Because of this lack of facts in the accusatory instrument, it will be extremely difficult, if not impossible, for me to identify the illegal acts I will be forced to defend myself against. State v. Cooper, 78 Or App 237 (1986), supports my view by providing:

"For an accusatory instrument to be sufficient against a demurrer, it must also satisfy the requirements of Article I, section 11, of the Oregon Constitution, which provides that a person accused of a crime has the right to 'demand the nature and cause of the accusation against him.' Additionally, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that *a charging instrument describe an offense with sufficient precision and certainty to enable a presumptively innocent person to prepare for trial*. See, e.g., Koontz v. Glossa, 731 F2d 365, 369 (6th Cir 1984); Barber v. Gladden, 327 F2d 101 (9th Cir), cert den 377 U.S. 971 (1964)." (my italics)

10. It is unlikely that this case would particularly lend itself to discovery on my part. As State v. Cooper further provides, "Defendant should not be required to undertake a fishing expedition to determine precisely what it is that [he] did wrong."

11. State v. Cooper sets up a prima facie case for this court to assess the individual complaint made in this dispute before it now. Specifically:

"In light of the statutory requirements for an accusatory instrument and the constitutional requirements of notice, we conclude that, when challenged for insufficiency, an assessment of the individual complaint must be made. We hold that in this case the complaint * * * is insufficient and cannot survive a challenge by demurrer, because it only restates the language of the charging statute without including the acts allegedly committed by defendant."

12. Pursuant to ORS 135.650, the objections presented herein may be heard at such time as the court may direct, presumably at the court date set for October 14th.

DATED: 10/14, 1997.

Respectfully submitted:

Lawrence Harry Redler

Lawrence Harry Redler, Defendant pro se